

ASSEMBLY BILL

No. 1763

Introduced by Committee on Natural Resources (Hancock (Chair), La Malfa (Vice Chair), Gordon, Koretz, Saldana, and Wolk)

March 17, 2005

An act to amend Sections 14574 and 14575 of the Public Resources Code, relating to beverage containers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, as introduced, Committee on Natural Resources. Beverage containers: redemption payments: processing fees.

The existing California Beverage Container Recycling and Litter Reduction Act requires a distributor of specified beverage containers to pay a redemption payment to the Department of Conservation for each beverage container, as defined, sold or transferred, for deposit in the California Beverage Container Recycling Fund. The act provides for an increase in that payment if a specified condition is not met by July 1, 2007. Under the act, the department is required to calculate a processing fee for each beverage container with a specified scrap value, which is required to be paid by beverage manufacturers for each beverage container sold or transferred to a dealer.

The act allows a distributor, upon the approval of the department, to elect to make a single annual payment, if the distributor meets specified conditions and notifies the department of its intent to make an annual redemption payments. The act also allows a beverage manufacturer, upon the approval of the department, to elect to make a single annual payment of processing fees, if the beverage manufacturer meets specified conditions and notifies the department of its intent to make an annual redemption payment.

This bill would revise the conditions under which a distributor or beverage manufacturer is authorized to make a single annual payment, and would revise the requirement to provide advance notice to the department with regard to this payment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14574 of the Public Resources Code is
2 amended to read:

3 14574. (a) A distributor of beverage containers shall pay to
4 the department the redemption payment for every beverage
5 container, other than a refillable beverage container, sold or
6 transferred to a dealer, less 1 percent for the distributor's
7 administrative costs.

8 (1) Except as provided in paragraph (2), the payment shall be
9 made within 40 days of any sale, or in the form and manner
10 which the department may prescribe.

11 (2) The payment made by a distributor of beer and other malt
12 beverages shall be made not later than the last day of the third
13 month following the sale.

14 (b) (1) Notwithstanding subdivision (a), ~~a distributor may, upon~~
15 ~~the approval of the department, elect to if a distributor displays a~~
16 ~~pattern of operation in compliance with this division and the~~
17 ~~regulations adopted pursuant to this division, to the satisfaction~~
18 ~~of the department, the distributor may make a single annual~~
19 ~~payment of redemption payments, if the distributor's projected~~
20 ~~distributor meets either of the following requirements:~~

21 (A) *If the redemption payment and refund value is not*
22 *increased pursuant to paragraph (3) of subdivision (a) of Section*
23 *14560, the distributor's projected redemption payment for a*
24 *calendar year totals less than ten thousand dollars (\$10,000) fifty*
25 *thousand dollars (\$50,000).*

26 (B) *If the redemption payment and refund value is increased*
27 *pursuant to paragraph (3) of subdivision (a) of Section 14560,*
28 *the distributor's projected redemption payment for a calendar*
29 *year totals less than seventy-five thousand dollars (\$75,000).*

30 (2) An annual redemption payment made pursuant to this
31 subdivision is due and payable on or before February 1 for every

1 beverage container sold or transferred by the distributor to a
2 dealer in the previous calendar year.

3 (3) A distributor shall notify the department of its intent to
4 make an annual redemption payment pursuant to this subdivision
5 on or before January 31 of the calendar year ~~preceding the year in~~
6 *for* which the payment will be due.

7 SEC. 2. Section 14575 of the Public Resources Code is
8 amended to read:

9 14575. (a) If any type of empty beverage container with a
10 refund value established pursuant to Section 14560 has a scrap
11 value less than the cost of recycling, the department shall, on
12 January 1, 2000, and on or before January 1 annually thereafter,
13 establish a processing fee and a processing payment for the
14 container by the type of the material of the container.

15 (b) The processing payment shall be at least equal to the
16 difference between the scrap value offered to a statistically
17 significant sample of recyclers by willing purchasers, and except
18 for the initial calculation made pursuant to subdivision (d), the
19 sum of both of the following:

20 (1) The actual cost for certified recycling centers, excluding
21 centers receiving a handling fee, of receiving, handling, storing,
22 transporting, and maintaining equipment for each container sold
23 for recycling or, only if the container is not recyclable, the actual
24 cost of disposal, calculated pursuant to subdivision (c). The
25 department shall determine the statewide weighted average cost
26 to recycle each beverage container type, which shall serve as the
27 actual recycling costs for purposes of paragraphs (2) and (3) of
28 subdivision (c), by conducting a survey of the costs of a
29 statistically significant sample of certified recycling centers,
30 excluding those recycling centers receiving a handling fee, for
31 receiving, handling, storing, transporting, and maintaining
32 equipment.

33 (2) A reasonable financial return for recycling centers.

34 (c) The department shall base the processing payment pursuant
35 to this section upon all of the following:

36 (1) The department shall use the average scrap values paid to
37 recyclers between October 1, 2001, and September 30, 2002, for
38 the 2003 calculation and the same 12-month period directly
39 preceding the year in which the processing fee is calculated for
40 any subsequent calculation.

1 (2) To calculate the 2003 processing payments, the
2 department shall use the recycling costs for certified recycling
3 centers used to calculate the January 1, 2002, processing
4 payments.

5 (3) For calculating processing payments that will be in effect
6 on and after January 1, 2004, the department shall determine the
7 actual costs for certified recycling centers, every second year,
8 pursuant to paragraph (1) of subdivision (b). The department
9 shall adjust the recycling costs annually to reflect changes in the
10 cost of living, as measured by the Bureau of Labor Statistics of
11 the United States Department of Labor or a successor agency of
12 the United States government.

13 (d) Notwithstanding paragraph (1) of subdivision (b) and
14 subdivision (c), for the purpose of setting the cost for recycling
15 non-PET plastic containers by certified recycling centers to
16 determine the processing payment for those containers, the
17 department shall use a recycling cost of six hundred forty-two
18 dollars and sixty-nine cents (\$642.69) per ton for the January 1,
19 2002, calculation of the processing payment.

20 (e) Except as specified in subdivision (f), the actual processing
21 fee paid by a beverage manufacturer shall equal 65 percent of the
22 processing payment calculated pursuant to subdivision (b).

23 (f) The department, consistent with Section 14581 and subject
24 to the availability of funds, shall reduce the processing fee paid
25 by beverage manufacturers by expending funds in each material
26 processing fee account, in the following manner:

27 (1) The processing fee in effect on January 1, 2004, shall be
28 equal the following amounts:

29 (A) For a container type that was subject to this division on
30 January 1, 1999, 12 percent of the processing payment if the
31 recycling rate of that container type was equal to, or greater than,
32 60 percent for the 1999 calendar year.

33 (B) For a container type that was not subject to this division on
34 January 1, 1999, 12 percent of the processing payment, if the
35 recycling rate of that container type was equal to, or greater than,
36 60 percent for the 2001 calendar year.

37 (C) For a container type that was not subject to this division on
38 January 1, 1999, 15 percent of the processing payment if the
39 recycling rate for that container type was equal to, or greater

1 than, 45 percent, but less than 60 percent for the 2001 calendar
2 year.

3 (D) For a container type that was not subject to this division
4 on January 1, 1999, 20 percent of the processing payment if the
5 recycling rate for that container type was equal to, or greater
6 than, 30 percent, but less than 45 percent, for the 2001 calendar
7 year.

8 (2) On January 1, 2005, and annually thereafter, the processing
9 fee shall equal the following amounts:

10 (A) Ten percent of the processing payment for a container type
11 with a recycling rate equal to or greater than 75 percent.

12 (B) Eleven percent of the processing payment for a container
13 type with a recycling rate equal to or greater than 65 percent, but
14 less than 75 percent.

15 (C) Twelve percent of the processing payment for a container
16 type with a recycling rate equal to or greater than 60 percent, but
17 less than 65 percent.

18 (D) Thirteen percent of the processing payment for a container
19 type with a recycling rate equal to or greater than 55 percent, but
20 less than 60 percent.

21 (E) Fourteen percent of the processing payment for a container
22 type with a recycling rate equal to or greater than 50 percent, but
23 less than 55 percent.

24 (F) Fifteen percent of the processing payment for a container
25 type with a recycling rate equal to or greater than 45 percent, but
26 less than 50 percent.

27 (G) Eighteen percent of the processing payment for a
28 container type with a recycling rate equal to or greater than 40
29 percent, but less than 45 percent.

30 (H) Twenty percent of the processing payment for a container
31 type with a recycling rate equal to or greater than 30 percent, but
32 less than 40 percent.

33 (I) Sixty-five percent of the processing payment for a
34 container type with a recycling rate less than 30 percent.

35 (3) The department shall calculate the recycling rate for
36 purposes of paragraph (2) based on the 12-month period ending
37 on June 30 that directly precedes the date of the January 1
38 processing fee determination.

39 (g) Not more than once every three months, the department
40 may make an adjustment in the amount of the processing

1 payment established pursuant to this section notwithstanding any
2 change in the amount of the processing fee established pursuant
3 to this section, for any beverage container, if the department
4 makes the following determinations:

5 (1) The statewide scrap value paid by processors for the
6 material type for the most recent available 12-month period
7 directly preceding the quarter in which the processing payment is
8 to be adjusted is 5 percent more or 5 percent less than the average
9 scrap value used as the basis for the processing payment
10 currently in effect.

11 (2) Funds are available in the processing fee account for the
12 material type.

13 (3) Adjusting the processing payment is necessary to further
14 the objectives of this division.

15 (h) (1) Except as provided in paragraphs (2) and (3), every
16 beverage manufacturer shall pay to the department the applicable
17 processing fee for each container sold or transferred to a
18 distributor or dealer within 40 days of the sale in the form and in
19 the manner which the department may prescribe.

20 (2) (A) Notwithstanding Section 14506, with respect to the
21 payment of processing fees for beer and other malt beverages
22 manufactured outside the state, the beverage manufacturer shall
23 be deemed to be the person or entity named on the certificate of
24 compliance issued pursuant to Section 23671 of the Business and
25 Professions Code. If the department is unable to collect the
26 processing fee from the person or entity named on the certificate
27 of compliance, the department shall give written notice by
28 certified mail to that person or entity. The notice shall state that
29 the processing fee shall be remitted in full within 30 days of
30 issuance of the notice or the person or entity shall not be
31 permitted to offer that beverage brand for sale within the state. If
32 the person or entity fails to remit the processing fee within 30
33 days of issuance of the notice, the department shall notify the
34 Department of Alcoholic Beverage Control that the certificate
35 holder has failed to comply, and the Department of Alcoholic
36 Beverage Control shall prohibit the offering for sale of that
37 beverage brand within the state.

38 (B) The department shall enter into a contract with the
39 Department of Alcoholic Beverage Control, pursuant to Section
40 14536.5, concerning the implementation of this paragraph, which

1 shall include a provision reimbursing the Department of
2 Alcoholic Beverage Control for its costs incurred in
3 implementing this paragraph.

4 (3) (A) Notwithstanding paragraph (1), ~~a beverage~~
5 ~~manufacturer may, upon the approval of the department, elect to~~
6 *if a beverage manufacturer displays a pattern of operation in*
7 *compliance with this division and the regulations adopted*
8 *pursuant to this division, to the satisfaction of the department,*
9 *the beverage manufacturer may make a single annual payment of*
10 *processing fees, if the beverage manufacturer meets either of the*
11 *following conditions:*

12 (i) *If the redemption payment and refund value is not*
13 *increased pursuant to paragraph (3) of subdivision (a) of Section*
14 *14560, the beverage manufacturer's projected processing fees for*
15 *a calendar year total less than ~~one thousand dollars (\$1,000)~~ ten*
16 *thousand dollars (\$10,000).*

17 (ii) *If the redemption payment and refund value is increased*
18 *pursuant to paragraph (3) of subdivision (a) of Section 14560,*
19 *the beverage manufacturer's projected processing fees for a*
20 *calendar year total less than fifteen thousand dollars (\$15,000).*

21 (B) An annual processing fee payment made pursuant to this
22 paragraph is due and payable on or before February 1 for every
23 beverage container sold or transferred by the beverage
24 manufacturer to a distributor or dealer in the previous calendar
25 year.

26 (C) A beverage manufacturer shall notify the department of its
27 intent to make an annual processing fee payment pursuant to this
28 paragraph on or before January 31 of the calendar year ~~preceding~~
29 ~~the year in~~ *for* which the payment will be due.

30 (4) The department shall pay the processing payments on
31 redeemed containers to processors, in the same manner as it pays
32 refund values pursuant to Sections 14573 and 14573.5. The
33 processor shall pay the recycling center the entire processing
34 payment representing the actual cost and financial return incurred
35 by the recycling center, as specified in subdivision (b).

36 (i) When assessing processing fees pursuant to subdivision (a),
37 the department shall assess the processing fee on each container
38 sold, as provided in subdivisions (e) and (f), by the type of
39 material of the container, assuming that every container sold will

1 be redeemed for recycling, whether or not the container is
2 actually recycled.

3 (j) The container manufacturer, or a designated agent, shall
4 pay to, or credit, the account of the beverage manufacturer in an
5 amount equal to the processing fee.

6 (k) If, at the end of any calendar year for which glass recycling
7 rates equal or exceed 45 percent and sufficient surplus funds
8 remain in the glass processing fee account to make the reduction
9 pursuant to this subdivision or if, at the end of any calendar year
10 for which PET recycling rates equal or exceed 45 percent and
11 sufficient surplus funds remain in the PET processing fee account
12 to make the reduction pursuant to this subdivision, the
13 department shall use these surplus funds in the respective
14 processing fee accounts in the following calendar year to reduce
15 the amount of the processing fee that would otherwise be due
16 from glass or PET beverage manufacturers pursuant to this
17 subdivision.

18 (1) The department shall reduce the glass or PET processing
19 fee amount pursuant to this subdivision in addition to any
20 reduction for which the glass or PET beverage container qualifies
21 under subdivision (f).

22 (2) The department shall determine the processing fee
23 reduction by dividing two million dollars (\$2,000,000) from each
24 processing fee account by an estimate of the number of
25 containers sold or transferred to a distributor during the previous
26 calendar year, based upon the latest available data.